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*Attorneys for Defendants*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

|                                |   |                    |
|--------------------------------|---|--------------------|
| -----                          | X |                    |
| SECURITIES INVESTOR PROTECTION | : |                    |
| CORPORATION,                   | : | SIPA LIQUIDATION   |
|                                | : |                    |
| Plaintiff-Applicant,           | : | No. 08-01789 (CGM) |
|                                | : |                    |
| v.                             | : |                    |
|                                | : |                    |
| BERNARD L. MADOFF INVESTMENT   | : |                    |
| SECURITIES, LLC,               | : |                    |
|                                | : |                    |
| Defendant.                     | : |                    |

|                    |   |  |
|--------------------|---|--|
| -----              | X |  |
| In re:             | : |  |
|                    | : |  |
| BERNARD L. MADOFF, | : |  |
|                    | : |  |
| Debtor.            | : |  |

|  |   |  |
|--|---|--|
| -----  | X |  |
| IRVING H. PICARD, Trustee for the Substantively    | : |  |
| Consolidated SIPA Liquidation of Bernard L. Madoff | : |  |
| Investment Securities LLC and Bernard L. Madoff    | : |  |
|  | : |  |
| Plaintiff,   | : |  |

|    |   |                        |
|----|---|------------------------|
|    | : |                        |
| v. | : | Adv. Pro. No. 10-05169 |
|    | : |                        |

|   |   |  |
|---|---|--|
|   | : |  |
| FAIRFIELD PAGMA ASSOCIATES, LP, a New York              | : |  |
| York limited partnership, SEYMOUR KLEINMAN,             | : |  |
| ESTATE OF MARJORIE KLEINMAN aka MARJORIE                | : |  |
| HELENE KLEINMAN, BONNIE JOYCE KLEINMAN,                 | : |  |
| as executor, FAIRFOX, LLC, a New York limited liability | : |  |
| company, and SEYFAIR, LLC, a New York limited           | : |  |
| liability company,                                      | : |  |
|   | : |  |
| Defendants.   | : |  |

|       |   |  |
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## **OBJECTION AND COUNTER PROPOSED JUDGMENT**

Defendants Fairfield Pagma Associates, LP, Seymour Kleinman, Bonnie Joyce Kansler, as Executor of the Estate of Marjorie Kleinman (“MK Estate”), Fairfax, LLC and Seyfair, LLC, respectfully submit this Objection and Counter-Proposed Judgment in response to the Notice of Presentment of Order Implementing Judgment and proposed Judgment (the “Proposed Judgment”) to be presented for settlement and signature on April 22, 2022 (Docs. 139 and 139-1) by Irving H. Picard, as trustee (“Trustee”), for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff. Defendants object to the decision and order in its entirety, but with respect to the Trustee’s Proposed Judgment, object as follows:

### **1. The Trustee’s Proposed Judgment Miscalculates the Award of Prejudgment Interest**

The Trustee’s Proposed Order calculates the Court’s award of prejudgment interest on the avoidable transfers at the rate of 4%, from December 3, 2010 through April 19, 2022 to be \$666,394.09. Doc. 139-1, p. 4. This is incorrect. As this Court has previously held in awarding prejudgment interest in multiple cases brought by the Trustee seeking to clawback fictitious BLMIS profits, such awards are to be calculated on a simple basis “without compounding” from the date the SIPA action was commenced through the date the judgment was entered. *See Picard v. The Gerald and Barbara Keller Family Trust*, 634 B.R. 39, 53 (Bankr. S.D.N.Y. 2021) (“Consistent with other decisions that have awarded prejudgment interest, the Court holds that interest is awarded in the amount of 4%, **without compounding**, commencing on [the SIPA action filing date] through the date of the entry of judgment in this case.”) (emphasis added); *see also Picard v. BAM L.P. (In re BLMIS)*, 624 B.R. 55, 65–66 (Bankr. S.D.N.Y. 2020) (same).

The Trustee commenced this action on December 3, 2010 and the Court's Decision granting summary judgment to the Trustee was entered on April 13, 2022 (Doc. 137), which amounts to 11 years and 131 days or 11.35890411 years. The interest accrued from simple interest on a principal of \$1,247,929.00 at a rate of 4% per year for 11.35890411 years is \$567,004.23. The total amount accrued, principal plus interest, is \$1,814,933.23, as reflected in the Counter Proposed Judgment attached hereto as Exhibit A.

### **CONCLUSION**

For the reasons set forth herein, Defendants respectfully request that the attached Counter Proposed Judgment be entered by this Court in place of the Trustee's Proposed Judgment (Doc. 139-1).

Submitted: New York, New York  
April 21, 2021

By: /s/ Barry R. Lax  
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*Attorneys for Defendants*

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

|   |   |                        |
|---|---|------------------------|
| -----   | X |                        |
| SECURITIES INVESTOR PROTECTION                          | : |                        |
| CORPORATION,  | : | SIPA LIQUIDATION       |
|   | : |                        |
| Plaintiff-Applicant,                                    | : | No. 08-01789 (CGM)     |
|   | : |                        |
| v.  | : |                        |
|   | : |                        |
| BERNARD L. MADOFF INVESTMENT                            | : |                        |
| SECURITIES, LLC,  | : |                        |
|   | : |                        |
| Defendant.  | : |                        |
| -----   | X |                        |
| In re:  | : |                        |
|   | : |                        |
| BERNARD L. MADOFF,                                      | : |                        |
|   | : |                        |
| Debtor.   | : |                        |
| -----   | X |                        |
| IRVING H. PICARD, Trustee for the Substantively         | : |                        |
| Consolidated SIPA Liquidation of Bernard L. Madoff      | : |                        |
| Investment Securities LLC and Bernard L. Madoff         | : |                        |
|   | : |                        |
| Plaintiff,  | : |                        |
|   | : |                        |
| v.  | : | Adv. Pro. No. 10-05169 |
|   | : |                        |
| FAIRFIELD PAGMA ASSOCIATES, LP, a New York              | : |                        |
| York limited partnership, SEYMOUR KLEINMAN,             | : |                        |
| ESTATE OF MARJORIE KLEINMAN aka MARJORIE                | : |                        |
| HELENE KLEINMAN, BONNIE JOYCE KLEINMAN,                 | : |                        |
| as executor, FAIRFOX, LLC, a New York limited liability | : |                        |
| company, and SEYFAIR, LLC, a New York limited           | : |                        |
| liability company,                                      | : |                        |
|   | : |                        |
| Defendants.   | : |                        |
| -----   | X |                        |

**JUDGMENT**

**WHEREAS**, Irving H. Picard (the “Trustee”) is the trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa–lll, substantively consolidated with the

liquidation under chapter 7 of 11 U.S.C. §§ 101–1532, of the estate of Bernard L. Madoff (“Madoff”), currently pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) as Adv. Pro. No. 08-01789 (CGM);

**WHEREAS**, the Trustee is duly qualified to serve and act on behalf of the consolidated estate of BLMIS and Madoff;

**WHEREAS**, on or about December 3, 2010, the Trustee commenced the above-captioned adversary proceeding (the “Adversary Proceeding”) in the Bankruptcy Court, alleging, inter alia, that Fairfield Pagma Associates, LP, Seymour Kleinman, Estate of Marjorie Kleinman a/k/a Marjorie Helene Kleinman, Bonnie Joyce Kansler, as executor, Fairfax, LLC, and Seyfair, LLC received avoidable transfers in an amount aggregating \$1,247,929 in connection with BLMIS Account No. 1ZA994 within two years of December 11, 2008;

**WHEREAS**, on February 16, 2022, during a hearing on, among other motions, the Trustee’s motion for summary judgment, the Court granted summary judgment in favor of the Trustee and against Fairfield Pagma Associates, LP, Fairfax, LLC, and Seyfair, LLC under Federal Rule of Civil Procedure 56(a); and

**WHEREAS**, on April 13, 2022, the Court issued a memorandum decision, *Picard v. Fairfield Pagma Associates, LP*, Adv. Pro. No. 10-05169 (CGM), 2022 WL 1110560 (Bankr. S.D.N.Y. Apr. 13, 2022), granting summary judgment in favor of the Trustee and against Seymour Kleinman and Bonnie Joyce Kansler, as executor of the Estate of Marjorie Helene Kleinman, which was entered on the Court’s Docket on April 13, 2022. Doc. 137 (the “Decision”).

**NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. As set forth in the Decision, the Court made the following findings and conclusions:

- a. The Court has subject matter jurisdiction over this Adversary Proceeding under SIPA § 78eee(b)(4), 28 U.S.C. §1334, 157(a) & (b), and Order No. M10-450 (S.D.N.Y. July 10, 1984), as amended by Amended Standing Order of Reference No. M10-468, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012);
- b. Madoff operated BLMIS as a Ponzi scheme;
- c. Fairfield Pagma Associates LP received \$1,247,929.00 in fictitious profits that BLMIS transferred to Fairfield Pagma Associates LP within two years of December 11, 2008 (the “Two-Year Transfers”);
- d. The Two-Year Transfers were transfers of an interest of the debtor because the
- e. Two-Year Transfers originated from BLMIS’s JPMorgan Accounts, and are “customer property” within the meaning of SIPA 78lll(4). The Two-Year Transfers must be returned to the Trustee pursuant to SIPA § 78fff-2(c)(3);
- f. The Trustee is entitled to rely on the Ponzi scheme presumption and has demonstrated that the Two-Year Transfers were made with the actual intent to hinder, delay, or defraud creditors within the meaning of 11 U.S.C. §§ 548(a)(1)(A) and 550(a);
- g. The Two-Year Transfers are avoided under 11 U.S.C. § 548(a)(1)(A) and recoverable from Fairfield Pagma Associates LP under 11 U.S.C. § 550;
- h. Seyfair, LLC, Fairfox, LLC, Seymour Kleinman, and Marjorie Kleinman were general partners of Fairfield Pagma Associates LP;
- i. As general partners, Seyfair, LLC, Fairfox, LLC, Seymour Kleinman, and Bonnie Joyce Kansler, as executor of the Estate of Marjorie Kleinman a/k/a Marjorie

Helene Kleinman, are jointly and severally liable for Fairfield Pagma Associates LP's debts;

- j. Under New York law, Defendant Estate of Marjorie Kleinman a/k/a Marjorie Helene Kleinman is not a proper party and is dismissed; The Trustee is entitled to prejudgment interest from December 11, 2008 (the "SIPA Filing Date") through the date of this Judgment because the Trustee has spent approximately ten years prosecuting this case and cannot be made whole without an award of prejudgment interest.
2. The Trustee is awarded prejudgment interest on the Two-Year Transfers pursuant to 28 U.S.C. § 1961(b), at the rate of 4% from the SIPA Filing Date through April 13, 2022.
3. Judgment is hereby entered in favor of the Trustee to recover from Fairfield Pagma Associates, LP, Seymour Kleinman, Bonnie Joyce Kansler, as executor of Estate of Marjorie Kleinman a/k/a Marjorie Helene Kleinman, Fairfax, LLC, and Seyfair, LLC, jointly and severally, the total amount of \$1,814,933.23 (the "Judgment Amount"), representing the sum of:

Account No. 1ZA994 – Fairfield Pagma Associates, LP, Fairfax LLC, and Seyfair LLC

- a. Avoidable Transfers: \$1,247,929.00
- b. Pre-judgment interest on the Avoidable Transfers at the rate of 4%, from Dec. 3, 2010 through Apr. 13, 2022: \$567,004.23.

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c. Total: \$1,814,933.23



4. The Clerk of Court shall enter this Judgment in favor of the Trustee and against Fairfield Pagma Associates, LP, Seymour Kleinman, Bonnie Joyce Kansler, as executor of Estate of Marjorie Kleinman a/k/a Marjorie Helene Kleinman, Fairfax, LLC, and Seyfair, LLC for the Judgment Amount.